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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 Beckley Division
4 Civil Action No.: 5:14-cv-24506

5 _____
6 DAVID M. DAUGHERTY,
7 Plaintiff,

8 vs.

DEPOSITION OF:

9 EQUIFAX INFORMATION SERVICES, STEVEN F. NAPIER
10 LLC, and OCWEN LOAN SERVICING,
11 LLC,

12 Defendants.
13 _____/

14
15 TRANSCRIPT of the stenographic notes
16 of the proceedings in the above-entitled matter,
17 as taken by and before, CONNIE M. NICHOLS,
18 Registered Professional Reporter and Notary
19 Public of the State of West Virginia, held at
20 the offices of WINGATE BY WYNDHAM, 1502 Grand
21 Central Avenue, Vienna, West Virginia, on
22 Friday, August 21, 2015, commencing at 2:06 p.m.

23
24 Job No. 2123679

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2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 STEVEN F. NAPIER

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6

7 EXHIBITS

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9 Exhibit 1 Notice of Deposition 12

10 for Steven F. Napier

11 Exhibit 2 Amended Notice of Deposition 12

12 for One Community

13 Exhibit 3 Computer notes 18

14 Exhibit 4 Affidavit 23

15 Exhibit 5 Documents produced in response 29

16 to subpoena

17 Exhibit 6 Handwritten note 37

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1 * * *

2 STEVEN F. NAPIER,

3 being first duly sworn, was examined and deposed

4 as follows:

5 * * *

6 EXAMINATION

7 BY MR. KENNEY:

8 Q. Now I'd ask you to please state your

9 name and date of birth on the record, please.

10 A. Steven F. Napier, 5/14/1965.

11 Q. Thank you very much, Mr. Napier. My

12 name is Jon Kenney, and I'm the attorney that is

13 representing the defendant in this case, Ocwen

14 Loan Servicing. And we're here today for your

15 deposition. Have you ever given deposition

16 testimony before?

17 A. Yes, sir.

18 Q. And how many times have you given

19 deposition testimony?

20 A. Probably a half-dozen times.

21 Q. Have you ever given a Rule 30(b)(6)

22 deposition for One Community Federal Credit

23 Union?

24 A. No, sir.

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1 Q. In the depositions that you've given

2 previously, have they been 30(b)(6) depositions

3 or have they been depositions in your personal

4 capacity?

5 A. They were more along the lines of when

6 I was in the collections field and a

7 repossession agent.

8 Q. Okay.

9 And I'll just go over a couple ground

10 rules anyway, because I just like to have it on

11 record.

12 So I'll be asking some questions

13 today, and some of them you may want to answer

14 with a "yes" or "no." And if that's the answer

15 you care to give, I just ask you to verbalize it

16 for the court reporter. Okay?

17 A. Yes, sir.

18 Q. And you understand today that you are

19 under oath just as you would be in court?

20 A. Yes, sir.

21 Q. Okay.

22 And it's very important that you

23 listen to the question that I ask, so that you

24 can give me a responsive answer. So if I ask a

2 (Pages 2 - 5)

<p style="text-align: right;">Page 22</p> <p>1 talked to me about the loan, wanted to make sure</p> <p>2 we were comfortable granting the loan for the</p> <p>3 van repairs.</p> <p>4 Q. Was there any formal application that</p> <p>5 was made with regard to this private consumer</p> <p>6 loan?</p> <p>7 A. Yes.</p> <p>8 Q. And what did that application involve?</p> <p>9 A. What a normal process you go through</p> <p>10 for an application: name, address, Social</p> <p>11 Security number, income.</p> <p>12 Q. Was there a credit check that was done</p> <p>13 with regard to this loan?</p> <p>14 A. I'm almost positive there was, yes.</p> <p>15 Q. And that credit check, would that have</p> <p>16 been done within the same time period, July 24,</p> <p>17 2014?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And it looks like he was ultimately</p> <p>20 approved for this loan; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay.</p> <p>23 And I'd like to turn now to the</p> <p>24 affidavit that you had submitted.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And I understand that the context that</p> <p>2 this is in was that because there was a</p> <p>3 foreclosure appearing on Mr. Daugherty's credit</p> <p>4 report, there was no further inquiry in the</p> <p>5 application process; is that right?</p> <p>6 A. Correct. We couldn't proceed any</p> <p>7 further with the process.</p> <p>8 Q. And how did you know that the</p> <p>9 foreclosure was appearing?</p> <p>10 A. It showed up on his Tri-Merge credit</p> <p>11 report, when Debbie Lee pulled credit on</p> <p>12 Mr. Daugherty.</p> <p>13 Q. So in connection with this refinance,</p> <p>14 you had actually run a credit inquiry; is that</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And going back to this affidavit,</p> <p>18 paragraph 5 says: "Although Mr. Daugherty had</p> <p>19 state tax liens on his credit report and other</p> <p>20 collections, the Credit Union may have offered a</p> <p>21 loan to Mr. Daugherty because of his history</p> <p>22 with the Credit Union."</p> <p>23 Is that correct?</p> <p>24 A. Yes, sir.</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. KENNEY: And this is tab 6, and</p> <p>2 we can mark this Exhibit 4.</p> <p>3 * * *</p> <p>4 (Whereupon, Napier Deposition Exhibit 4</p> <p>5 was marked for purposes of</p> <p>6 identification.)</p> <p>7 * * *</p> <p>8 BY MR. KENNEY:</p> <p>9 Q. Mr. Napier, are you familiar with this</p> <p>10 document?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And this is an affidavit that was</p> <p>13 executed by you; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. Did you write this affidavit?</p> <p>16 A. Yes.</p> <p>17 Q. I'd like to turn to paragraph 4 here,</p> <p>18 which says: "One Community Federal Credit Union</p> <p>19 procedures require that the lending process ends</p> <p>20 if an applicant is in bankruptcy or</p> <p>21 foreclosure."</p> <p>22 A. Okay.</p> <p>23 Q. Is that right?</p> <p>24 A. Yes, sir.</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. And I understand you have written here</p> <p>2 the word "may." And so I just want to ask: You</p> <p>3 can't say with reasonable certainty that One</p> <p>4 Community would have offered a loan; is that</p> <p>5 correct?</p> <p>6 A. Correct. Too many variables.</p> <p>7 Q. And you have here at the bottom of it:</p> <p>8 "May have offered a loan to Mr. Daugherty</p> <p>9 because of his history with the Credit Union."</p> <p>10 However it's not a -- it's not a</p> <p>11 common practice to approve loans simply because</p> <p>12 of a relationship with One Community; is that</p> <p>13 right?</p> <p>14 A. It depends on the situation and the</p> <p>15 individual.</p> <p>16 Q. If there were adverse tradelines</p> <p>17 appearing on a consumer's credit report, it</p> <p>18 would not be the normal practice of One</p> <p>19 Community to approve a loan for that consumer</p> <p>20 simply on the basis of their relationship with</p> <p>21 the bank -- well, let me rephrase that.</p> <p>22 If there were adverse tradelines on a</p> <p>23 consumer's credit report, it wouldn't be the</p> <p>24 normal practice of One Community to approve a</p>

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<p style="text-align: right;">Page 26</p> <p>1 large refinance, such as the one at issue here, 2 simply on the basis of the consumer's 3 relationship with the bank; is that correct? 4 A. Correct. 5 Q. And so the last paragraph here, 6 paragraph 6, says: "The Credit Union cannot 7 proceed with the loan after noting that Ocwen 8 reported to Equifax that his home is in 9 foreclosure." 10 Is that right? 11 A. That's correct. 12 Q. So what would be the next step -- 13 after a credit report is run -- what would be 14 the next step in proceeding with the loan 15 application? 16 A. They would make sure that the -- 17 probably the next thing would be is make sure 18 that the debt-to-income ratio would fall in 19 line. 20 Q. And how about after that? 21 MR. WOOFER: Jon, this is Andrew 22 Woofert. 23 Just to clarify, you're asking in the 24 event there would not have been a foreclosure or</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Correct. 2 Q. So even if Mr. Daugherty had no 3 foreclosure appearing on his credit report, it 4 is possible that he could have still been 5 ultimately denied for the loan depending on his 6 debt-to-income ratio and the loan-to-value? 7 A. Yes, that's true. 8 Q. Did Mr. Daugherty ever fill out a 9 formal credit application? 10 A. I don't know, I wasn't in when Debbie 11 Lee took the application. But I'm assuming he 12 did. 13 Q. Is this a common practice that a 14 consumer would fill out a formal loan 15 application before a credit inquiry would be 16 run? 17 A. Yes. 18 Q. And when One Community runs their 19 credit check, is there a particular service that 20 they use? For example, do they typically check 21 the TransUnion FICO score, Equifax or Experian? 22 A. On the mortgages? Mortgage loans are 23 what they call a Tri-Merge, they pull all three. 24 And then on the consumer side, we pull a</p>
<p style="text-align: right;">Page 27</p> <p>1 bankruptcy listed on the credit report, correct? 2 MR. KENNEY: That's right. 3 BY MR. KENNEY: 4 Q. I'm asking in your typical -- in your 5 typical loan, such as the one at issue here, 6 after a credit report is run, I'm just wondering 7 what the next steps are to proceed with the loan 8 application that would ultimately lead to 9 approve or denial. 10 A. Yeah, you've got several factors that 11 would be involved. You'd have to look at a 12 debt-to-income ratio. You'd have to look at the 13 loan-to-value ratio. Okay. You'd have to look 14 at the number of tradelines the member may or 15 may not have. There's several factors involved 16 in going through whether you're going to approve 17 or deny a loan. 18 Q. And it's my understanding that there 19 was no debt-to-income ratio analysis that 20 occurred here, correct, with Mr. Daugherty? 21 A. Correct. Once the foreclosure was 22 reported, everything stopped at that point. 23 Q. And there was no loan-to-value 24 analysis with Mr. Daugherty; is that correct?</p>	<p style="text-align: right;">Page 29</p> <p>1 TransUnion credit score. 2 Q. I'm sorry, so who pulls the 3 TransUnion? 4 A. On the consumer side, it's TransUnion. 5 Q. Oh, for consumer loans it's a 6 TransUnion report, and for the mortgage loans, 7 it's a Tri-Merge; is that right? 8 A. Yes, sir. 9 Q. Okay. I understand. 10 So going -- I'd like to discuss the 11 TransUnion report now that was produced. 12 MR. KENNEY: And this is behind, I 13 believe this was produced in response to the 14 subpoena. Let's just mark the documents that 15 were produced by One Community in response to 16 the subpoena -- and this is the file that's 17 behind tab 5. We can just mark this as 18 Exhibit -- I believe we're on Exhibit 5 or 6; is 19 that right? 20 THE COURT REPORT: This will be 21 Exhibit 5. 22 * * * 23 (Whereupon, Napier Deposition Exhibit 5 24 was marked for purposes of</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q. And were other negative tradelines a 2 stop sign on his mortgage application? 3 A. Not in every circumstance, no. 4 MR. NOLAN: That's all I have. 5 MR. KENNEY: I'll just follow up 6 with one last thing. 7 * * * 8 EXAMINATION 9 BY MR. KENNEY: 10 Q. You said "not always." But it is 11 possible that tax liens could be a stop sign on 12 a mortgage application; is that correct? 13 A. Yes, sir. 14 Q. Okay. 15 A. Again, it's going to have to be looked 16 at on an individual case. 17 Q. Sure, sure. 18 A. If it's a small tax lien or a large 19 tax lien, you know. 20 Q. Sure. 21 And I think that's all the questions 22 we have for you. 23 A. Okay, gentlemen. Appreciate it. 24 MR. WOOFER: He'll waive review</p>	<p style="text-align: right;">Page 48</p> <p>1 THE STATE OF : WEST VIRGINIA : 2 : SS: CERTIFICATE COUNTY OF OHIO : 3 4 I, CONNIE M. NICHOLS, Registered Professional Reporter, do hereby certify that 5 the testimony given by the within-named witness, STEVEN F. NAPIER, was by me reduced to stenotype 6 in the presence of the witness; afterwards reduced to Computer Aided Transcription under my 7 direction and control; that the foregoing is a true and correct transcription of the testimony 8 given by said witness. 9 I do further certify that this testimony was taken at the time and place in the 10 foregoing caption specified; that the reading and signing was not requested, and this 11 deposition was completed without adjournment. 12 I do further certify that I am not a relative, counsel or attorney of either party, 13 or otherwise interested in the event of this action. 14 15 I, to the best of my ability, do further certify that the attached transcript meets the requirements set forth within 16 Article 27, Chapter 47 of the West Virginia Code. 17 18 IN WITNESS THEREOF, I have hereunto set my hand in Wheeling, West Virginia, on the 1st day of September, 2015. 19 20 21 _____ CONNIE M. NICHOLS Registered Professional Reporter 22 23 24</p>
<p style="text-align: right;">Page 47</p> <p>1 and signature. 2 THE COURT REPORTER: Are you 3 gentlemen ordering your transcripts? 4 MR. KENNEY: Yes. This is Jon 5 Kenney. I'd like an E-tran with electronic 6 exhibits. I'm sorry, we don't need any 7 exhibits, I have all those. So just an E-tran 8 and just regular delivery. 9 THE COURT REPORTER: Mr. Nolan? 10 MR. NOLAN: Yes, I'll take a 11 condensed copy, regular delivery is fine. 12 THE COURT REPORTER: Thank you. 13 * * * 14 (Whereupon, this deposition was 15 concluded at 2:54 p.m.) 16 * * * 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 49</p> <p>1 THE STATE OF : WEST VIRGINIA : 2 : SS: CERTIFICATE COUNTY OF OHIO : 3 4 I, CONNIE M. NICHOLS, Notary Public within and for the State of West Virginia, duly 5 commissioned and qualified, do hereby certify that the within-named witness, STEVEN F. NAPIER, 6 was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the 7 cause aforesaid. 8 9 I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this 10 action. 11 12 I, to the best of my ability, do further certify that the attached transcript meets the requirements set forth within 13 Article 27, Chapter 47 of the West Virginia Code. 14 15 I further certify that the reading and signing of the transcript was not requested. 16 17 IN WITNESS THEREOF, I have hereunto set my hand and affixed my seal of office at 18 Wheeling, West Virginia, on the 1st day of September, 2015. 19 20 21 _____ CONNIE M. NICHOLS Notary Public within and for the State of West Virginia 22 My Commission expires: October 16, 2016 23 24</p>

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